

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE

JUSTICE NEWTON

BETWEEN:

) FRIDAY DAY, THE 30TH
)
)
) DAY OF NOVEMBER, 2018
)

KIRK KEEPING

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

CERTIFICATION ORDER

THIS MOTION, made by the Plaintiff, for an order certifying this action as a class proceeding was read this day at 125 Brodie Street North, Thunder Bay, Ontario.

ON READING the pleadings in this action and the motion records of the parties and the factum of the Plaintiff;

AND ON BEING ADVISED that the parties consent to this Order,

AND WHEREAS the training schools are known as:

- (1) Pine Ridge School, Bowmanville (formerly The Ontario Training School for Boys), including the Cold Springs Forestry Camp;
- (2) Hillcrest School, Guelph (formerly known as Ontario Training School for Boys, Guelph);
- (3) Brookside School, Coburg (formerly Ontario Training School for Boys, Galt, and Ontario Training School for Boys Northumberland, and Ontario Training School for Boys, Coburg);
- (4) Trelawney House, Port Bolster (formerly known as Ontario Training School for Girls, Port Bolster Trelawney House);

- (5) Kawartha Lakes School, Lindsay (formerly Ontario Training School for Girls, Lindsay);
- (6) Glendale School, Simcoe (formerly Ontario Training School for Boys, Simcoe);
- (7) White Oaks Village, Hagersville (formerly Ontario Training School for Boys, Hagersville (Junior School));
- (8) Sprucedale School, Hagersville (formerly Ontario Training School for Boys, Hagersville (Senior School));
- (9) Cecil Facer School, Sudbury;
- (10) Project DARE – Portage Lake;
- (11) Project DARE – Wendigo Lake;
- (12) Syl Apps Youth Centre (formerly Ontario Training School for Girls, Galt (Reception and Diagnostic Centre); Reception and Diagnostic Centre, Galt; Reception, Diagnostic Treatment Centre, Galt; and the Reception and Assessment Centre, Oakville);

together, the "Training Schools", while "Training School" refers to any one of the training schools.

1. **THIS COURT ORDERS** that that this action be and hereby is certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

2. **THIS COURT ORDERS** that the Class is defined as:

All persons who were alive as at December 8, 2015 who resided at any of the Training Schools between January 1, 1953 and April 2, 1984 during the time periods set out for each facility:

- (1) Pine Ridge School, Bowmanville (formerly The Ontario Training School for Boys) between January 1, 1953 and its closure in 1979;
- (2) Cold Springs Forestry Camp between January 1, 1963 and its closure in 1976;
- (3) Hillcrest School, Guelph (formerly known as Ontario Training School for Boys, Guelph) between January 1, 1953 and its closure in 1978;

- (4) Brookside School, Coburg (formerly Ontario Training School for Boys, Galt, and Ontario Training School for Boys, Northumberland and Ontario Training School for Boys, Coburg) between January 1, 1953 and April 2, 1984;
- (5) Trelawney House, Port Bolster (formerly known as Ontario Training School for Girls, Port Bolster Trelawney House) between August 1959 and its closure in 1973;
- (6) Kawartha Lakes School, Lindsay (formerly Ontario Training School for Girls, Lindsay) between 1962 and its closure in 1979;
- (7) Glendale School, Simcoe (formerly Ontario Training School for Boys, Simcoe) between 1962 and July 30, 1974;
- (8) White Oaks Village, Hagersville (formerly Ontario Training School for Boys, Hagersville (Junior School)) between 1966 and its removal from the regulations under the training schools legislation in 1978;
- (9) Sprucedale School, Hagersville (formerly Ontario Training School for Boys, Hagersville (Senior School)) between 1966 and April 2, 1984;
- (10) Cecil Facer School, Sudbury between 1971 and April 2, 1984;
- (11) Project DARE – Portage Lake between June 1971 and 1976;
- (12) Project DARE – Wendigo Lake, South River (formerly Project DARE Wendigo Lake) between 1972 and April 2, 1984;
- (13) Syl Apps Youth Centre (formerly Ontario Training School for Girls, Galt (Reception and Diagnostic Centre); Reception and Diagnostic Centre, Galt; Reception, Diagnostic Treatment Centre, Galt; and the Reception and Assessment Centre, Oakville) between 1958 and April 2, 1984.

3. **THIS COURT ORDERS** that Kirk Keeping be and hereby is appointed as the representative plaintiff for the class.

4. **THIS COURT ORDERS** that the common issues be and are hereby certified as:

- (a) By its operation and management of the Training Schools after September 1, 1963, did the defendant breach a duty of care owed to the Class to protect them from actionable physical or mental harm?
- (b) By its operation and management of the Training Schools, did the defendant breach a fiduciary duty owed to the Class to protect them from actionable physical or mental harm, it being understood that it is without prejudice to the Crown defendant's right to argue that the

Crown was immune from fiduciary claims for damages prior to September 1, 1963?

- (c) Is the defendant vicariously liable during the applicable time period for the actionable physical, mental or sexual harm perpetrated by its employees, agents and representatives to the Class?
- (d) If the answer to either of common issues (a), (b), or (c) is "yes", can the court make an aggregate assessment of damages as part of the common issues trial, it being understood that it is without prejudice to the Crown defendant's right to argue that an aggregate assessment of damages is not proper in this case?
- (e) if the answer to either of common issues (a), (b) or (c) is "yes", does the defendant's conduct justify an award of punitive damages?
- (f) If the answer to common issue (e) is "yes", what amount of punitive damages ought to be ordered against the defendant?

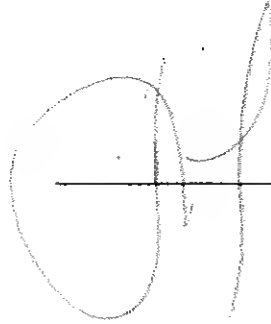
5. **THIS COURT ORDERS** that Koskie Minsky LLP be and hereby is appointed as counsel to the class ("Class Counsel").

6. **THIS COURT ORDER** that any other proceeding based on the subject matter of this action is stayed, except for any individual proceeding in respect of an individual who has validly opted out of this proceeding.

7. **THIS COURT ORDER** that no other proceeding based on the subject matter of this action may be commenced without leave of the court.

8. **THIS COURT ORDERS** that within ninety (90) days of the date of this Order, the parties shall consent to an order or a motion will be heard (subject to the availability of the case management judge) as to the form and manner in which class members shall be notified that this proceeding has been certified as a class proceeding and the manner in which class members may opt out.

9. THIS COURT ORDERS that the defendant shall pay to the plaintiff \$65,000, all inclusive, for costs for the motion for certification of this proceeding payable within thirty (30) days of this Order.

A handwritten signature, possibly reading "OH", is written over a horizontal line.

ENTRE 0 BOOK
INSUIT REGISTRAR
DATE DEC 04 2018
No. 5383 PER
No. POUR

KIRK KEEPING v. HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Court File No.: CV-17-0578-00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Thunder Bay
Proceeding under the *Class Proceedings Act*, 1992

CERTIFICATION ORDER

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